

APPEAL NO. 040192
FILED MARCH 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 1, 2003, with the record closing on December 10, 2003. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and did not have disability.

The claimant appealed, contending that the doctors incorrectly recorded his history and that he had a compensable injury because the pain began while he was in the course and scope of his employment. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant, a truck driver, alleges that he sustained a compensable injury on _____. The testimony and medical evidence on how the claimant incurred an injury is conflicting. At various times the claimant says he injured his back operating a crank to hook up a trailer, while sleeping in the bunker (bunk bed in the truck) and/or while getting up to tie his shoe. One doctor suggests an aggravation "doing the hooking of the trailer," another report suggests a repetitive trauma injury, and other reports just state pain started "while @ work." The claimant was eventually diagnosed with a herniated disc at L4-5 and had lumbar spinal surgery on December 12, 2002, paid for by medicaid.

The claimant has the burden to prove that he sustained a compensable injury and had disability. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The testimony and medical evidence were in conflict in regard to the disputed issues and the evidence was sufficient to support the determinations of the hearing officer. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Because we are affirming the hearing officer's determination that the claimant had not sustained a compensable injury, the claimant, by definition in Section 401.011(16), cannot have disability.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge